

EXHIBIT A  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHASOM BROWN, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK-SVK

Case No. 5:20-cv-05146-LHK-SVK

**SPECIAL MASTER'S REPORT AND  
ORDERS ON REFERRED DISCOVERY  
ISSUES**

Referral: Hon. Susan van Keulen  
United States Magistrate Judge

PATRICK CALHOUN, *et al.*,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

**I. DISCOVERY ISSUES REFERRED TO SPECIAL MASTER**

1. On July 13, 2021, Douglas A. Brush was appointed as the Special Master to this litigation. Mr. Brush was and is the principle of Accel Consulting, LLC ("Accel"), a company specializing in Information Security & Governance at the time of this appointment.

2. The Special Master was appointed to assist the Court, through advisory reports and recommendations, on the disputes the Court is currently deciding, including (1) what information Defendant has regarding Plaintiffs; and (2) what information Defendant has regarding identification of putative class members, as well as any future dispute that may arise related to technical issues with which the Court may need assistance (collectively the "Disputes").

3. Discovery disputes were REFERRED to the Special Master on July 13, 2021, and August 12, 2021 (5:20-cv-03664-LHK-SVK Dkt.221 and Dkt.242; :20-cv-05146-LHK-SVK

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Dkt.247 and Dkt.262).

4. Additional discovery disputes were REFERRED to the Special Master on October 1, 2021 (5:20-cv-05146-LHK-SVK Dkt.329). These discovery disputes will be adjudicated following the resolution of the disputes identified in paragraph three (3) above.

## **II. PROCEDURAL HISTORY BEFORE SPECIAL MASTER**

5. Special Master was provided with reference materials relevant to both matters, Brown, et. al. v. Google (5:20-cv-03664-LHK, hereinafter referred to in this document as “Brown”), and Calhoun, et. al. v. Google (5:20-cv-05146-LHK, hereinafter referred to in this document as “Calhoun”), on July 23, 2021, and July 29, 2021, respectively, in paper and electronic formats.

6. On July 30, 2021, Special Master convened a conference for the Parties to the Brown and Calhoun cases.

7. On August 10, 2021, the Court convened a call with Special Master to discuss the discovery disputes at issue for the Brown and Calhoun cases.

8. On August 12, 2021, the Parties and Special Master attended a discovery hearing before Magistrate Judge van Keulen.

9. On September 2, 2021, the Court convened a call with Special Master to discuss the discovery disputes at issue for the Brown and Calhoun cases.

10. On September 2, 2021, Special Master Brush requested updates on eight (8) items related to discovery disputes, Brown P14 and Calhoun 1.13. Google provided a brief update later in the day on September 2, 2021. On September 7, 2021, Plaintiffs (Brown and Calhoun) provided a joint Plaintiff response (in DOCX format) and Google provided a response for both Brown and Calhoun cases (via email).

11. On September 9, 2021, the Court convened a call with Special Master to discuss status and next steps for the process of resolving the relevant referred discovery disputes.

12. On September 10, 2021, Special Master, requested from Parties to each case, responses to a questionnaire covering each of the referred discovery disputes. Each case’s parties

1 were provided with a questionnaire specific to their case. Parties responded separately to the  
2 questionnaires on September 14, 2021.

3 13. On September 15, 2021, Special Master convened a conference for the Parties to  
4 Brown and Calhoun cases. During the conference, the responses to the September 20, 2021,  
5 request for responses (paragraph ten (10) above) were discussed and oral clarifications were  
6 elicited from the Parties by Special Counsel. During the conference Parties agreed to a process for  
7 resolving issues regarding the production of documents regarding Plaintiffs and potential class  
8 members.

9 14. On September 15, 2021, Special Master and the Court discussed the outcome of the  
10 conference held earlier in the day (paragraph thirteen (13) above).

11 15. On September 16, 2021, the Court issued an order (5:20-cv-03664-LHK-SVK  
12 Dkt.269; 5:20-cv-05146-LHK-SVK Dkt.304) superseding an earlier September 13, 2021, order  
13 setting a schedule for objections and a hearing on an anticipated Special Master's report. The  
14 Order formalized the three-step process that was put forth by Special Master and agreed upon by  
15 the Parties on September 15, 2021 (paragraph thirteen (13) above and discussed with the Court on  
16 September 15, 2021 (paragraph fourteen (14) above).

17 16. On September 17, 2021, Google provided to Plaintiffs for both cases, Brown and  
18 Calhoun, the results of Step-One of the processes ordered on September 16, 2021. Later in the day  
19 on September 17, 2021, Special Master Brush communicated to Google the need to continue  
20 moving forward with their preparations to provide Step-Two data to Plaintiffs and to propose a  
21 follow up conference between the Parties on both cases to clarify any outstanding questions of the  
22 Special Master and the Parties, identify relevant data sources that may not have been identified in  
23 Google's Step-One results, identify and prioritize relevant data sources to search, and to reach  
24 agreement on next steps and timing.

25 17. On September 22, 2021, the Special Master convened an informal conference with  
26 the Brown parties to discuss and agree on which data sources Plaintiffs identify for searching and  
27 production, the methods that would be employed for searches, to identify search criteria and

1 protocols, and set timing expectations for the resultant productions. Additionally, Special Master  
2 Brush implored Parties to continue meeting and conferring to resolve their disputes collaboratively  
3 and with minimal adjudication or input from him and the Court.

4 18. On September 23, 2021, the Special Master convened an informal conference with  
5 the Calhoun parties to discuss and agree on which data sources Plaintiffs identify for searching  
6 and production, the methods that would be employed for searches, to identify search criteria and  
7 protocols, and set timing expectations for the resultant productions. Additionally, Special Master  
8 Brush implored Parties to continue meeting and conferring to resolve their disputes collaboratively  
9 and with minimal adjudication or input from him and the Court.

10 19. On September 23, 2021, the Court was updated by the Special Master on status of  
11 resolution of the relevant discovery disputes for both the Brown and Calhoun cases.

12 20. On September 24, 2021, Brown Plaintiffs provided Google a selection of data  
13 sources for which Google was to provide further information and search as agreed in the meeting  
14 held on September 22, 2021 (paragraph seventeen (17) above).

15 21. On September 24, 2021, the Court was provided with an update on the discovery  
16 disputes resolution processes taking place for both the Brown and Calhoun cases.

17 22. On September 27, 2021, Google provided some Step-Two information for the  
18 Brown and Calhoun cases.

19 23. On September 27, 2021, Brown Plaintiffs provided the Special Master with  
20 correspondence stating issues they had identified with Google's performance of Step-One and  
21 Two processes.

22 24. On September 28, 2021, Special Master Brush communicated to the Parties of both  
23 cases a reiteration of his instructions to follow the Court's Order of September 16, 2021. He also  
24 reminded the parties that they are to work collaboratively to resolve issues and execute and  
25 complete Step-Two and Step-Three expeditiously.

26 25. On September 29, 2021, the Court was updated by the Special Master on status of  
27 the ongoing resolution of the relevant discovery disputes for both the Brown and Calhoun cases.

26. On September 28, 29, and 30, 2021, Parties in the Calhoun case provided Special Master with numerous correspondence outlining their contrasting perspectives on continuing issues concerning the as yet unresolved discovery disputes.

27. On September 30, 2021, the Special Master requested that Google provide, with respect to some of the Calhoun case's discovery disputes "further technical details with your client on the challenges posed and why *technically* it is burdensome?"

28. On September 30, 2021, the Parties and Special Master attended a discovery hearing before Magistrate Judge van Keulen.

29. On October 1, 2021, Calhoun Plaintiffs requested Google to expedite certain productions of [REDACTED], and [REDACTED] data.

30. On October 1, 2021, Google submitted to the Special Master, a letter providing a response to paragraph twenty-seven (27) above. The letter provides an explanation "of the burdens associated with providing the additional information Plaintiffs have requested."

31. On October 3, 2021, the Brown Plaintiffs provided correspondence indicating that Plaintiffs and Google had met and conferred on September 30, 2021, and October 1, 2021, and made further progress on resolving some of the outstanding discovery disputes, however, reported that both parties agreed that they continue to be at an impasse on some discovery disputes.

32. On October 5, 2021, the Special Master convened an informal conference with the Parties to the Brown case. In this conference, the Parties discussed progress made towards resolution of the relevant discovery disputes. The Parties also discussed continuing plans to move towards resolution of the outstanding discovery disputes.

33. On October 5, 2021, the Special Master convened an informal conference with the Parties to the Calhoun case. In this conference, the Parties discussed progress made towards resolution of the relevant discovery disputes. The Parties also discussed continuing plans to move towards resolution of the outstanding discovery disputes.

34. On October 6, 2021, the Plaintiffs in the Calhoun case circulated correspondence outlining their understanding of the proposal reached during the informal meet and confer

1 conference held the day before (paragraph thirty-three (33) above).

2 35. On October 6, 2021, Google, regarding the Brown case, provided correspondence  
3 confirming that the Parties agreed that Google was to create and produce for Plaintiffs a “diagram  
4 of the data and data-flow at issue in this case.” Google also stated that regarding discovery  
5 disputes P6 and P16, the parties were at “an impasse and unlikely to resolve these disputes” and  
6 that they, Plaintiffs and Google, “would appreciate your guidance.”

7 36. On October 8, 2021, Google provided an update on production status for some of  
8 the searches recently completed, in progress and those yet to be completed. The update also stated  
9 that some requested materials were not readily available, were too burdensome for Google to  
10 provide, and the effort that would be required to produce the materials would not be proportionate  
11 to the needs of the case. Google also stated, “with regard to Plaintiffs’ request for further  
12 information about log sources that are not front-end logs, we believe that” other logs may serve  
13 their purposes better.

14 37. On October 12, 2021, the Special Master convened informal meet and confer  
15 conferences with the Parties to the Brown case and the Calhoun case. Progress was discussed, the  
16 Special Master implored the Parties to resolve their outstanding discovery disputes, to provide a  
17 Joint Update the following day and that an order would be issued shortly on any discovery  
18 disputes not resolved to the Special Master’s satisfaction.

19 38. On October 13, 2021, the Brown Plaintiffs provided an update to their perspective  
20 on the outstanding discovery disputes that were referred to the Special Master. The update also  
21 stated their intention to raise these issues with the Court.

22 39. On October 13, 2021, the Parties to the Calhoun case provided a Joint Update to the  
23 Special Master on progress made and outstanding discovery disputes.

24 40. On October 13, 2021, the Parties to the Brown case provided a Joint Update to the  
25 Special Master on progress made and outstanding discovery disputes.

26 41. On October 14, 2021, the Plaintiffs to the Brown case filed a Notice of Motion and  
27 Motion Seeking Relief for Google’s Failure to Obey Discovery Order. Dkt. 292



42. On October 15, 2021, the Special Master requested the Parties to both the Brown and Calhoun cases provide Joint Status Updates “of the disputes that have been resolved, those that are in the process of resolution, and those that are still outstanding” as well as roadmaps for the resolutions.

43. On October 16, 2021, the Parties to both the Brown and Calhoun cases provided Joint Status Updates to the Special Master.

44. On October 17, 2021, Google provided draft data-flow diagrams as agreed in paragraph thirty-five (35) above.

45. On October 18, 2021, the Special Master corresponded with the Parties to the Brown case thanking them for their diligent work towards resolving the discovery disputes, to continue working towards the resolution of the discovery disputes, and that he intended to issue a Special Master’s Report and Recommendation to complete the resolution of the outstanding discovery disputes no later than Wednesday, October 20, 2021.

46. On October 18, 2021, the Special Master corresponded with the Parties to the Calhoun case thanking them for their diligent work towards resolving the discovery disputes, to continue working towards the resolution of the discovery disputes, and that he intended to issue a Special Master’s Report and Recommendation to complete the resolution of the outstanding discovery disputes no later than Wednesday, October 20, 2021.

47. On October 19, 2021, the Court was updated by the Special Master on status of the ongoing resolution of the relevant discovery disputes for both the Brown and Calhoun cases.

48. On October 19, 2021, the Court issued an Order Regarding Briefing Schedule Following Special Master Report and Recommendation and Staying Briefing on Dkt.292 in -3664 Action for both the Brown and Calhoun cases (5:20-cv-03664-LHK Dkt.297; 5:20-cv-05146-LHK Dkt.348).

### III. FINDINGS OF FACT

49. The proceedings and interactions described in Section II have led to significant progress in resolution of the discovery disputes referred to the Special Master.



50. Google has engaged in and is, at the time of this Special Master's Report and Recommendation, in the process of producing relevant, responsive materials for the respective Plaintiffs under the supervision and as a direct result of the Special Master's intervention in resolving the disputes referred to the Special Master.

51. Plaintiffs in both cases, Brown and Calhoun, have engaged collaboratively in diligent efforts to resolve the discovery disputes referred to the Special Master.

52. The Special Master, after review of the Parties' submissions, arguments of counsel and the First Amended Complaint, finds that access to nonpublic source code and access to Google's systems via Clean-Room access are overbroad and not proportional to the needs of the case (Exhibit "A").

53. The Special Master, after review of the Parties' submissions, arguments of counsel and the First Amended Complaint, finds that materials related to Google's production of Plaintiffs' data (Brown) and in the case of Calhoun, data associated with Plaintiffs or their "PI," are both relevant and proportional to the needs of the respective cases but have not yet been fully produced (Exhibit "A").

54. The Special Master, after review of the Parties submissions, arguments of counsel and the First Amended Complaint, finds that the Brown discovery disputes regarding Class Member Identification and Logged-in and Logged-out users are so closely related to the Production of Plaintiffs' Data that productions of these data sets would likely be redundant to that which would be produced in paragraph 53 above. The Special Master rules that the outcome of these two discovery disputes will be subsumed into the ruling in paragraph 53 above (Exhibit "A").

#### IV. FINDINGS OF LAW

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake

1 in the action, the amount in controversy, the parties' relative access to relevant information, the  
2 parties' resources, the importance of the discovery in resolving the issues, and whether the burden  
3 or expense of the proposed discovery outweighs its likely benefit. Information within this scope of  
4 discovery need not be admissible in evidence to be discoverable. The Special Master's rulings  
5 reflect the application of this standard of relevancy and proportionality to the facts provided by the  
6 Parties through the process detailed above in Section II.

7 **V. SPECIAL MASTER RECOMMENDATIONS**

8 55. Exhibit A sets forth the Special Master's rulings on the discovery disputes  
9 REFERRED to the Special Master on July 13, 2021, and August 12, 2021 (5:20-cv-03664-LHK-  
10 SVK Dkt.221 and Dkt.242; :20-cv-05146-LHK-SVK Dkt.247 and Dkt.262).

11 56. To allow for the process outlined in the Court's order referred to above in  
12 paragraph 48, the "effective date" of this order shall be the date it is adopted or otherwise ruled  
13 upon by the Court.

14  
15  
16 Dated: October 20, 2021

17  
18 

19 Douglas A. Brush  
20 Special Master

Case	No.	Date Submitted	Date Referred	Dispute	Special Master's Order (10/19/21)
5:20-cv-03664-LHK-SVK	P3	4/7/2021	8/12/2021	<b>Google's production of Plaintiffs' data:</b> The parties have a dispute regarding Plaintiffs' RFP No. 18: "Documents concerning Plaintiffs, including Plaintiffs' use of Google services, all data collected by Google from and regarding Plaintiffs, and Google's use of all data collected by Google from and regarding Plaintiffs."	<p>1. Within two days of the effective date of this Special Master's Report and Recommendations Google is to provide a full list of all data sources which have been searched during the overall discovery process.</p> <p>2. Within two days of the effective date of this Special Master's Report and Recommendations Google is to provide, for each search performed, full criteria (including code/script and, where code/script is not easily understood, an explanation of the code/script) used as well as the name of the tool(s) used.</p> <p>3. As a reasonable person with experience working in the IT field would expect that live production systems are fully documented with the information requested. Within two days of the effective date of this Special Master's Report and Recommendations Google is to provide full schemas, a list of ALL fields with their descriptions, a list of tools used to search, and instruction sets and manuals for all tools identified as being used by "Googlers" to search each data source identified by plaintiffs for searching:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>* Any data sources searched in addition to the above 7,</p> <p>* Any other of the [REDACTED] data sources Plaintiffs choose for identification.</p> <p>4. Google is to, run iterations of each search of the above data sources as described below:</p> <p>* If not already done, within two days of the effective date of this Special Master's Report and Recommendations, provide to Plaintiffs full records of each responsive and relevant search term hit as well as the criteria used for the search.</p> <p>* Upon receipt of responsive and relevant search term hits and relevant search term criteria, Plaintiff may update search criteria and have Google run searches iteratively (no more than three additional iterations not inclusive of the initial search) at Plaintiffs request. Plaintiff updates to search criteria will be provided to Google for searching within 2 days of receipt of productions; Google will complete iterative searches and related productions within 3 days of being provided with updated search criteria by Plaintiffs.</p> <p>* IP address search hits will not identify a unique user in most/may cases. IP address can, however, be used along with another "identifier" or "identifiers" to form criteria for a search. Plaintiffs must specify additional criteria to search on when using an IP address as a search term. If additional search terms are identified in previous searches of a data source, those terms may also be combined with IP addresses to form iterative searches up to the number identified in the bullet directly above this one.</p> <p>5. Within two days of the effective date of this Special Master's Report and Recommendations Google and Plaintiffs will provide to the Special Master, the proposed search criteria for two data source searches that Google has not yet run. If the criteria are adjudged to likely have over-broad response rates, Special Master will deny the search of data sources with these criteria. If the criteria are adjudged by the Special Master to likely not have over-broad response rates, Special Master will allow the search of data sources with these search criteria and order Google to carry out the search and provide relevant responsive records to the Plaintiffs (subject to the clawback provisions in place).</p>
5:20-cv-03664-LHK-SVK	P6	4/7/2021	7/13/2021	<b>Class member identification:</b> The parties have a dispute regarding Plaintiffs' RFP No. 10: "Documents sufficient to identify all alleged class members, including all electronic or physical address information associated with alleged class members."	See ruling re P3, above.

Case	No.	Date Submitted	Date Referred	Dispute	Special Master's Order (10/19/21)
5:20-cv-03664-LHK-SVK	P7	4/7/2021	7/13/2021	<b>Logged in and logged out:</b> The parties have a dispute regarding what constitutes logged in and logged out behavior.	See ruling re P3, above.
5:20-cv-03664-LHK-SVK	P14	5/26/2021	8/12/2021	<b>Access to non-public Google source code:</b> The parties have a dispute regarding Plaintiffs' requests for access to nonpublic Google source code.	DENIED. Overbroad.
5:20-cv-03664-LHK-SVK	P16	5/26/2021	7/13/2021	<b>X-Client Data:</b> The parties have a dispute regarding Plaintiffs' RFP 120: "Documents sufficient to identify, during the Class Period, Chrome web browser communications that did not contain any X-Client Data Header?"	DENIED. Overbroad.

Case	No.	Date Submitted	Date Referred	Dispute	Special Master's Order (10/19/21)
5:20-cv-05146-LHK-SVK	1.3	4/20/2021	7/13/2021	RFP No. 5, request for data associated with Plaintiffs or their PI	<p>1. Within two days of the effective date of this Special Master's Report and Recommendations Google is to provide a full list of all data sources which have been searched during the overall discovery process.</p> <p>2. Within two days of the effective date of this Special Master's Report and Recommendations Google is to provide, for each search performed, full criteria (including code/script and, where code/script is not easily understood, an explanation of the code/script) used as well as the name of the tool(s) used. This should be provided in a form that can be easily reviewed, validated, and reconciled to productions.</p> <p>3. As a reasonable person with experience working in the IT field would expect that live production systems are fully documented with the information requested. Within two days of the effective date of this Special Master's Report and Recommendations Google is to provide full schemas, a list of ALL fields with their descriptions, a list of tools used to search, and instruction sets and manuals for all tools identified as being used by "Googlers" to search each of the following data sources:</p> <ul style="list-style-type: none"> <li>* Identified by plaintiffs for searching</li> <li>* Previously searched by Google for this case,</li> <li>* Any potentially relevant data source (from the list provided by Google) where information about sync-state signals are stored, where sync-state is expressly stated or from which signals include: [REDACTED]</li> <li>* Any back-end logs where at least three of the following data parameters are found: (1) user or device identifiers; (2) URL or content of a user communication; (3) profile information; (4) ad information that includes pricing or revenue information; (5) X-client data; or (6) user-agent</li> <li>* Any potentially relevant data source (from the list provided by Google) where [REDACTED] data resides.</li> </ul> <p>4. Google is to, run iterations of each search of the Plaintiff identified data sources as described below:</p> <ul style="list-style-type: none"> <li>* If not already done, within two days of the effective date of this Special Master's Report and Recommendations, provide to Plaintiffs full records of each responsive and relevant search term hit as well as the criteria used for the search.</li> <li>* Upon receipt of responsive and relevant search term hits and relevant search term criteria, Plaintiff may update search criteria and have Google run searches iteratively (no more than three additional iterations not inclusive of the initial search) at Plaintiff's request. Plaintiff updates to search criteria will be provided to Google for searching within 2 days of receipt of productions; Google will complete iterative searches and related productions within 3 days of being provided with updated search criteria by Plaintiffs.</li> <li>* IP address search hits will not identify a unique user in most many cases. IP address can, however, be used along with another "identifier" or "identifiers" to form criteria for a search. Plaintiffs must specify additional criteria to search on when using an IP address as a search term. If additional search terms are identified in previous searches of a data source, those terms may also be combined with IP addresses to form iterative searches up to the number identified in the bullet directly above this one.</li> </ul> <p>5. Google is to complete, within two days of the effective date of this Special Master's Report and Recommendations, the following tasks subject to iterative follow up searches described in number four (4) above agreed by Plaintiffs and Google:</p> <ol style="list-style-type: none"> <li>1. [REDACTED] data searches and production</li> <li>2. [REDACTED] Data searches and production</li> <li>3. [REDACTED] searches and production</li> </ol> <p>6. Agreed upon [REDACTED] data will be provided to Google by Plaintiffs within two days of the effective date of this Special Master's Report and Recommendations. Google will complete these searches and related productions within 3 days of being provided [REDACTED] data by Plaintiffs.</p>
5:20-cv-05146-LHK-SVK	1.13	8/2/2021	8/12/2021	Clean-Room Access	DENIED. Overbroad.